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Social Media Vigilantism

Dr. JoAnne Sweeney†

INTRODUCTION

On November 13, 2017, a meme was posted on Facebook. The meme contained a photograph of a man behind a bar holding up two bottles of whiskey with text at the top and bottom of the image. The man—sporting bushy shoulder-length hair and large hipster glasses—smiled at the camera. The text, in a typical white Helvetica meme font, read: “MATTHEW LANDAN IS A RAPIST.” The poster of the meme included the #MeToo hashtag in the body of their post. Matthew Landan was the owner of the Haymarket Whiskey Bar, a Louisville, Kentucky bar specializing in unique whiskies and bourbons. The bar was also a tourist spot featured as part of Louisville’s “Urban Bourbon Trail.”

Once posted, the meme was widely shared and quickly generated hundreds of comments. Several commenters

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1 Louisville Bourbon Bar Rapist, DIRTY (Nov. 18, 2017, 10:00 AM), https://thedirty.com/city/louisville/louisville-bourbon-bar-rapist/#post-2223891. Due to the litigation that followed, which will be discussed further in this article, the original Facebook post has been deleted and most news stories do not show the original meme.

2 Id.

3 Id.


indicated that Landan had assaulted them as well.\(^8\) One woman came forward with a detailed allegation that Landan drugged her before engaging in sexual intercourse with her.\(^9\) In another comment, the original poster added details about her alleged rape.\(^10\) The descriptions were graphic and upsetting.

The word spread quickly across social media. Shortly after the initial meme was posted, Landan posted on his own Facebook page and denied the claims:

Last night, out of the blue, an individual posted a meme of me and made serious, false, malicious and defamatory allegations. Following that was an avalanche of responses that seemed to take this person’s allegations for the unquestioned truth and the story has taken off from there. I do not know this person and I do not know why she is making these horrendous and outrageous claims about me, but they are not true. I will have an additional statement soon.\(^11\)

Despite Landan’s denial, several people posted one-star Yelp reviews on the Haymarket’s page that were later removed by Yelp for “violating [its] Terms of Service.”\(^12\) But Landan and the Haymarket also experienced more tangible consequences. Shortly after the meme was posted, the entire Haymarket staff walked off the job, the bar temporarily closed due to lack of staffing, and a group of activists protested outside the empty bar.\(^13\) The Louisville Convention & Visitors Bureau also removed the bar from the Urban Bourbon Trail.\(^14\) In addition, individuals

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\(^8\) Id.
\(^9\) Id. What appears to be the only remaining post containing allegations is from another woman who claims Landan purposefully got her drunk at his bar and she was saved by another man who got her home safely. Meghan Voight, FACEBOOK (Nov. 14, 2017), https://www.facebook.com/megan.elizabeth.voight/posts/10211037545551393.
\(^11\) These posts have been scrubbed and the information has to be gleaned from other websites. See Hillary Dixler Canavan, Louisville Bar Staff Quits After Rape Allegation Emerges Against Owner [UPDATE], EATER (Dec. 8, 2017, 2:46 PM), https://www.eater.com/2017/11/16/16666140/haymarket-whiskey-bar-matthew-landan-rape-allegations-closeds; See Reddit Thread, supra note 10. Contemporaneous news sources also noted that Landan asserted that he did not know his accuser. See Loosemore & Costello, supra note 7.
\(^12\) 14 Reviews for Haymarket Whiskey Bar That Are Not Currently Recommended, YELP, https://www.yelp.com/not_recommended_reviews/haymarket-whiskey-bar-louisville?removed_start=10 [https://perma.cc/TTZ2-RQNK].
\(^13\) Loosemore & Costello, supra note 4; Canavan, supra note 11.
\(^14\) Loosemore & Costello, supra note 4.
and groups that regularly performed at the Haymarket publicly declared they would no longer do so.\textsuperscript{15}

Less than a month after the meme went viral, Landan filed a defamation lawsuit against the woman who posted the meme, the woman who publicly accused him of drugging her before engaging in sexual intercourse with her, and two of his former employees.\textsuperscript{16} He reopened his bar the same day.\textsuperscript{17}

As of 2023, no criminal charges have been filed against Landan, and his civil case is ongoing. The second woman and the two employees sued by Landan filed counterclaims against him for abuse of process.\textsuperscript{18} Nearly every trace of the original Facebook post is gone, save for a few scattered posts on various social media platforms.\textsuperscript{19} The Haymarket no longer has a website or Facebook page, but its Twitter account, created in March 2018, is still up.\textsuperscript{20} As for the bar itself, although the Haymarket reopened months after the allegations,\textsuperscript{21} it closed again during the COVID-19 pandemic, reopened once more, and is now permanently closed.\textsuperscript{22} Landan is still listed as the owner on Yelp, and up until 2020 he actively responded to poor Yelp reviews.\textsuperscript{23}


\textsuperscript{16} Loosemore & Costello, supra note 7.


\textsuperscript{20} Haymarket Whiskey Bar (@Haymarketwhiskey), TWITTER, https://twitter.com/haymarketwhiskey (last visited Aug. 21, 2022).


\textsuperscript{23} Haymarket Whiskey Bar, YELP, https://www.yelp.com/biz/haymarket-whiskey-bar-louisville (last accessed Aug. 21, 2022). Many of the negative reviews name
Landan currently has a LinkedIn profile that lists him as a bourbon bottler.²⁴

When the initial Facebook post and meme were created, the comments indicated that no one was surprised by the allegations.²⁵ Similarly, a Reddit thread created shortly after the meme contained several posts that either expressed a lack of surprise at the allegations or noted that Landan’s identity as a rapist is well-known in certain circles.²⁶ If that is the case, however, why was Landan permitted to continue his actions for so long? Why were the police not involved?

Landan continues to deny the accusations, and some might argue that the lack of criminal charges demonstrates the women are lying.²⁷ This is a common refrain in sexual assault cases: it is “he said, she said,” with the implication being that what “she said” is insufficient evidence to prove that a sexual assault actually occurred.²⁸ In that respect, the “he said” is implicitly more powerful and more credible, even to the police. So, women²⁹ are understandably skeptical of the criminal legal

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²⁵ Molly O’Shah (@MollyOShah), TWITTER (Nov. 14, 2017, 8:52 PM), https://twitter.com/MollyOShah/status/930614428676050945/photo/2 (showing screenshots of comments on the original Facebook post of individuals unsurprised by the allegations, with the Twitter user noting tallying around twenty-five such comments).

²⁶ Over a Dozen Women Have Now Come Forward Accusing Haymarket Whiskey Bar Owner Matthew Landan of Rape, REDDIT (Nov. 14, 2017, 2:04 PM), https://www.reddit.com/r/Louisville/comments/7cxwhb/over_a_dozen_women_have_now_come_forward_accusing/ [https://perma.cc/YY38-TFYE].

²⁷ As recently as May 2020, Landan was proclaiming his innocence via post on his personal Facebook page, which was under the name Matthew Landau. In that post, he also stated that the accusations against him were orchestrated by his former bar managers who wanted to use the scandal to buy the bar from him for “pennies on the dollar.” The screenshot of the Facebook post is on file with author.


²⁹ Sexual assault and harassment are generally gendered crimes; they are committed most often by men against women. However, men are certainly survivors of these crimes and members of the LGBTQ+ community are just as likely and sometimes more likely, to be survivors as well. See Male Survivors of Sexual Assault, UNIV. TEXAS AUSTIN COUNSELING & MENTAL HEALTH CTR., https://www.cmhc.utexas.edu/vav/vav_mensexassault.html [https://perma.cc/E6X6-6UK2]; Sexual Assault and the LGBTQ Community, HUMAN RTS. CAMPAIGN, https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community [https://perma.cc/8ZP2-UJQ6]. This article will use feminine pronouns to describe survivors and masculine pronouns to describe perpetrators for convenience but the author is aware that sexual assault and abuse can be committed by anyone and against anyone. For readers interested in learning more about how these crimes are perpetrated against men, people of color, and the LGBTQ+ community, the author recommends the following recent articles: Katie M. Edwards, et al., Disclosure of Sexual Assault Among Sexual and Gender Minorities: A Systematic Literature Review, TRAUMA, VIOLENCE & ABUSE 1
system. Why should women report when the criminal legal system repeatedly fails them so spectacularly? And, if they do not turn to the criminal legal system, where do they go?

Enter the #MeToo movement. The grassroots movement was conceptualized and founded by Tarana Burke on Myspace back in 2006. The movement later gained massive traction in 2017 when Alyssa Milano posted her sexual assault survivor story accompanied by the #MeToo hashtag in response to the Harvey Weinstein scandal.\(^{30}\) In the beginning, women used the hashtag to share their stories to a sympathetic audience. Over time, however, their stories garnered the attention of mainstream media, and when the women named their abusers, people took notice—and the movement took on a new dimension.\(^{31}\) The named men—some rich and powerful—began to suffer employment, social, and political consequences.\(^{32}\) Others, including Weinstein, the man at the center of this social and legal event, were also criminally prosecuted and imprisoned.\(^{33}\)

The next phase of the #MeToo movement was perhaps inevitable: the backlash. As powerful men began to suffer
consequences for their alleged actions, critics emerged, accusing the movement of going too far and harming men based on insufficient reasons or false claims.\textsuperscript{34} #MeToo began to be criticized as vigilante justice.\textsuperscript{35} However, it is not clear whether #MeToo can actually be characterized as vigilante justice and, if it can, what that means for the movement. Part I of this article defines vigilantism and then applies that definition to the #MeToo movement. Part II then analyzes the backlash experienced by #MeToo participants. Part III concludes with a proposal that, whether #MeToo could be considered a vigilante movement or not, #MeToo should return to its survivor-oriented roots to minimize any future backlash.

I. DEFINING SOCIAL MEDIA VIGILANTISM

To determine whether the #MeToo movement even qualifies as vigilantism, a working definition of “vigilantism” must be created. Although the word is often invoked in scholarly works and popular media, surprisingly little legal scholarship has been devoted to creating a thorough definition.

The word “vigilante” comes from “vigilance,” or the act of “being watchful in regard to the condition of the governed and the welfare of the nation.”\textsuperscript{36} Early “vigilance committees” sprung up in the American frontier and were frequently led by prominent citizens who defended their communities from foreign attack or unchecked crime.\textsuperscript{37} For example, one of the first “vigilance committees” created in San Francisco in 1851 was formed by leaders of the community, including businessmen and

\textsuperscript{34} The #HimToo movement was created in response to #MeToo in order to highlight the issue of false rape and harassment claims, with the implication that #MeToo will increase these false claims. Anna North, #HimToo, the Online Movement Spreading Myths About False Rape Allegations, Explained, Vox (Oct. 10, 2018), https://www.vox.com/policy-and-politics/2018/10/10/17957126/himtoo-movement-pieter-hanson-tweet-me-too [https://perma.cc/ZU8Y-59AC].


\textsuperscript{37} Id.
lawyers, to ensure that wrongdoers were punished despite the “governmental defects” of inefficient courts, ineffective laws, and corrupt police officers. This group took it upon themselves to catch and punish offenders—typically by hanging—to deter future crimes.

A basic definition of vigilante activity is the informal regulation of criminal or moral deviance. An “informal regulation” presumes the existence of actors who are not formally recognized enforcers of the law but nevertheless take it upon themselves to enforce either the official law or a commonly recognized moral code. A more detailed definition of vigilantism explains that it is “an organized attempt by a group of ‘ordinary citizens’ to enforce norms and maintain law and order on behalf of their communities, often by resort to violence.” This definition makes the actors seem more altruistic; their actions are not selfish but rather are community motivated. This definition also adds a more sinister element: the resort to violence. Other definitions focus on the social interactions of vigilantism, which consist of rituals or “repetitive patterns of action sequences, meanings, and purposes that are recognized by the participants.”

The most in-depth definition of vigilantism comes from British scholar Les Johnston, who conceptualizes vigilantism as containing six elements: (1) “planning, preparation, and organization,” (2) “private voluntary agency,” (3) “autonomous citizenship,” (4) “the use or threatened use of force,” (5) “reaction to crime and social deviance[,] and (6) personal and collective security.” Though detailed, this definition is unwieldy and critics believe it too specific to account for the variety of ways that vigilantism may present itself. Similarly, existing definitions of vigilantism in political science literature are criticized as overinclusive because they tend to include extremely disparate acts ranging from “uncivil disobedience” to

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58 Id. at 56.
59 Id. at 46–47.
61 Id. at 220–21.
62 Muhammad Asif & Don Weenink, Vigilante Rituals Theory: A Cultural Explanation of Vigilante Violence, 2019 EUR. J. CRIM. 163, 165. A similar definition of vigilantism states that it is “a set of practices to scrutinise, denounce and even leverage harm against those deemed to transgress legal and/or moral boundaries, with the intention of achieving some form of justice.” Daniel Trottier, Denunciation and Doxing: Towards a Conceptual Model of Digital Vigilantism, 21 GLOB. CRIME 196, 197 (2020).
63 Asif & Weenink, supra note 42, at 165.
64 Johnston, supra note 40, at 222, 224, 226, 228, 230.
65 Id. at 221.
state-sanctioned violence. At the same time, they are also underinclusive when they focus on restrictive, unnecessary criteria such as planning and rituals.

Each of these definitions of vigilantism seem to have three considerations in common: (1) a target who has committed some kind of offense, (2) the vigilante’s use of extralegal actions, and (3) the vigilante’s imposition of consequences on a target. Although no definition of such an amorphous concept as vigilantism can ever be perfect, this definition overcomes the criticisms of being either over- or underinclusive by emphasizing the key traits that separate vigilantism from either government actions or other kinds of violence. As shown below, this definition of vigilantism is also broad enough to effectively analyze contemporary movements that originate online.

Less than a year after it went viral in 2017, the #MeToo movement was compared to vigilant justice by celebrities such as Catherine Deneuve and Terry Gilliam, as well as scholars and feminists, including Margaret Atwood. Several other scholars and commentators refuted this moniker, but, using the three parts of the vigilantism definition noted above—offense, extralegal, and consequences—#MeToo does appear at first glance to have some vigilant tendencies.

A. Offense

When analyzing whether the #MeToo movement qualifies as vigilantism, the “offense” part of the vigilantism definition is arguably the easiest to satisfy. Motivation is a key component of vigilantism, and vigilantes generally react to an offense—that is, to a perceived crime or act of social deviance.
A desire to curtail crime is the most obvious type of vigilante motivation and the type most likely to be covered in the media.\textsuperscript{53} For example, a mob almost killed serial killer Richard Ramirez, the man the media dubbed the “Night Stalker,” over his fifteen-month killing spree.\textsuperscript{54} The mob spontaneously formed as Ramirez walked through a neighborhood in East Los Angeles when locals recognized him from a photograph recently revealed by the media.\textsuperscript{55}

However, vigilantism does not always arise in response to such vicious crimes. Instead, it is typically a reaction to some kind of believed deviance or threat to institutionalized norms.\textsuperscript{56} This perceived deviance or social harm creates a “need” for security that vigilantes seek to fulfill.\textsuperscript{57} Moreover, this reaction to a real or perceived transgression is typically motivated by a desire to ensure the security of an individual or group.\textsuperscript{58} The vigilante’s need for security translates into “a concern to minimize objective threat[s] to persons, property, or values and to reduce associated fear.”\textsuperscript{59}

A common threat helps vigilante movements form a sense of community identity that is comprised of shared core values.\textsuperscript{60} This sense of group identity is key for vigilantes; it creates an insider versus outsider mentality that can turn into violent action when an outsider transgresses against the group.\textsuperscript{61} Consequently, high rates of victimization within the group heightens the likelihood that a vigilante group will form and act.\textsuperscript{62}
This mentality also creates a shared focus of attention and mood.\textsuperscript{63} Emotions such as “fear, righteous anger, and a desire for retaliation” combine with the vigilantes’ group identity so that a harm done to one of the members is perceived as a harm to all.\textsuperscript{64} In addition, these strong emotions, when combined with other factors, motivate vigilantes to “do something” to protect themselves and others.\textsuperscript{65}

For example, the small communities that comprise the bulk of Maine’s lobster industry have a long history of exacting violence to protect their catch against outsiders seeking to encroach on their territories.\textsuperscript{66} Similarly, in 1977, David Duke, the Grand Wizard of the Ku Klux Klan, announced that the KKK would begin policing the United States-Mexico Border to “hunt down” undocumented immigrants in order to protect “our culture.”\textsuperscript{67} Though the KKK members never caught anyone, their threatened action was just the beginning of a long line of vigilante movements to defend the United States border with Mexico.\textsuperscript{68} Both of these vigilante movements were created to protect “insiders” from the invasion of “outsiders.”

Online vigilantism likewise creates communities with shared values centered around concepts of social justice.\textsuperscript{69} In fact, online vigilantism typically arises spontaneously in response to a specific offense that becomes a flashpoint for the online community, such as Reddit users who helped locate the Boston Bomber,\textsuperscript{70} and a Facebook group that formed to catch a serial killer after he posted a video of himself killing a cat.\textsuperscript{71} The creators of these movements showed “vigilance” by witnessing these inciting events, and engaging an online community to exact what they perceived as justice.\textsuperscript{72}

\textsuperscript{63} See Asif & Weenink, supra note 42, at 169; Weisburd, supra note 57, at 147.
\textsuperscript{64} Asif & Weenink, supra note 42, at 166.
\textsuperscript{65} Johnston, supra note 40, at 231.
\textsuperscript{68} Id.
\textsuperscript{69} Trottier, supra note 42, at 197.
\textsuperscript{72} Trottier, supra note 42, at 204.
A dramatic example of online vigilantism was the “Big Red” scandal brought to light by a blogger and magnified by the hacktivist group Anonymous.73 In 2012, a girl was repeatedly raped by members of the Steubenville, Ohio high school football team.74 In addition to committing the sexual assaults, the perpetrators, along with witnesses, shared images and videos of the assaults on social media.75 Despite the abhorrent nature of these acts, the case received no national coverage until Alexandria Goddard, an attorney from Steubenville, wrote about them on her blog, revealing that both the high schoolers and the adults in charge of them were well aware of the horrific event yet did nothing to address it.76 Anonymous later dumped a large amount of information, including hacked messages, photos, and videos that implicated the team, boosters, town sheriff, and other school officials in a coverup of the crime.77 As a result of these leaks, multiple school officials were indicted, including the school district superintendent, an elementary school principal, and two coaches.78 The two young men arrested for the rape itself, Trent Mays and Ma’lik Richmond, were tried as juveniles and sentenced to one and two years’ incarceration, respectively.79

73 Jordan Fairbairn & Dale Spencer, Virtualized Violence and Anonymous Juries: Unpacking Steubenville’s “Big Red” Sexual Assault Case and the Role of Social Media, 13 FEMINIST CRIMINOLOGY 477, 483 (2018). Hacktivism is defined as “the marriage of hacking and activism. It covers operations that use hacking techniques against a target’s Internet site with the intent of disrupting normal operations but not causing serious damage. Examples are web sit-ins and virtual blockades, automated e-mail bombs, web hacks, computer break-ins, and computer viruses and worms.” Dorothy E. Denning, Activism, Hacktivism, and Cyberterrorism: The Internet as a Tool for Influencing Foreign Policy, in NETWORKS AND NETWORKS 239, 241 (John Arquilla & David Ronfeldt eds., 2001).

74 Id.

75 Id.


79 Fairbairn & Spencer, supra note 73, at 484. Both played college football and Richmond was removed from the sex offender registry. Josh Sweigart & Max Filby, CSU QB Isn’t on Sex Offender Registry Because Conviction Came as Minor, DAYTON DAILY NEWS (Mar. 24, 2018), https://www.daytondailynews.com/news/crime—law/csu-ism-sex-offender-registry-because-conviction-came-minor/th6R85KQTdeT46e8WobRoK/
Ironically, the main hacker was caught by the FBI and sentenced to two years’ incarceration—a sentence as long or longer than those served by the rapists.80

#MeToo also involves a response to criminal and socially unacceptable behavior. #MeToo cultivates a shared identity by allowing people to identify themselves as survivors of sexual assault and harassment via the hashtag, as well as to condemn such harm. By simply tweeting “#MeToo,” which may be the entire content of the tweet, participants in the #MeToo movement signal their solidarity to other movement members and the public at large. #MeToo now has a specific meaning: it conjures images of sexual assault and harassment, probably at the hands of a man.81 The simple hashtag places the tweet into a world of context and meaning that others immediately understand. Although other, similar hashtags are used to convey the same message, particularly internationally,82 #MeToo has taken on such meaning that it is almost a requirement for inclusion in the movement, even in countries where English is not the official language.83

The increased use of #MeToo in 2017 was a response to the New York Times reporting of the Harvey Weinstein scandal, and the movement grew from there.84 In its early stages, #MeToo was limited to more mainstream concepts of abuse and harassment. Indeed, its founder, Tarana Burke, meant for #MeToo to specifically refer to sexual assault.85 Early media reporting likewise focused on the most egregious cases, such as

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82 Many countries have also adopted their own hashtags, sometimes even before #MeToo went viral, such as #Balancetonporc in France which means “squeal on your pig,” and #Lääpijää in Finland, which roughly translates into “groper.” Dr. JoAnne Sweeney, The #MeToo Movement in Comparative Perspective, 29 AM. U. J. GENDER SOC. POL’Y & L. 33, 35, 62 (2020).
85 Id.
the multiple accusations of sexual assault committed by
gymnastics doctor Larry Nassar. These early cases often
involved multiple women or men coming forward with clear-cut
claims of abuse.

Over time, however, things became muddier. An article
about a woman’s encounter with Aziz Ansari, which described a
date where the woman consented to engage in sexual activity
only after increased pressure by Ansari, was decried by critics
as just “bad sex” and not worthy of inclusion within the #MeToo
movement. Moira Donegan’s “Shitty Media Men List” was
likewise decried for including instances of sexual assault
alongside inappropriate comments or taking credit for a
woman’s work. Perhaps as a result of these and similar stories,
a 2020 survey conducted by NPR showed that nearly half of
those surveyed believed the #MeToo movement had “gone too
far,” partially because of the perception that movement
members characterize relatively minor conduct as sexual
misconduct. A similar percentage of respondents also
expressed uncertainty as to what sexual assault actually
means. Still, others claim that #MeToo has not gone far
enough, particularly in other countries.

The confusion as to what “counts” as a #MeToo offense
contributes to the backlash. With such a broad coalition
embracing people of different backgrounds (and even
nationalities), it is no wonder the movement finds it difficult
to clearly define what offensive experience is worthy of the
hashtag. The diverse makeup of the #MeToo community also

86 Nicolou & Smith, supra note 32.
87 Id.
88 Bari Weiss, Aziz Ansari Is Guilty. Of Not Being a Mind Reader, N.Y. TIMES
harassment.html [https://perma.cc/N4FB-YP9T].
89 Doree Shafrir, What To Do With “Shitty Media Men”?, BUZZFEED NEWS (Oct.
shitty-media-men [https://perma.cc/X4YP-PK9V]; Moira Donegan, I Started the Media
Men List, My Name Is Moira Donegan, CUT (Jan. 10, 2018),
[https://perma.cc/7D2Q-M6CE].
90 Madison Hoff, Americans Have Complicated Feelings on the 3-Year-Old
#MeToo Movement—and Some Still Can’t Decide if It’s Been Good for the Country, INSIDER
(Mar. 11, 2020, 11:49 AM), https://www.businessinsider.com/attitudes-on-sexual-
91 Id.
92 Kylie Cheung, Despite Male Hysteria, #MeToo Didn’t “Go Too Far”—It
Hasn’t Gone Far Enough, SALON (July 1, 2021, 6:02 PM),
cc/89J2-5C8E]; Maya Oppenheim, #MeToo Has Not Gone Far Enough: Survey Finds
Movement Virtually Unheard of by Women in Developing Countries, INDEP. (Mar. 8,
2019, 1:17 AM), https://www.independent.co.uk/news/world/international-womens-day-
metoo-afghanistan-nigeria-assault-a8812121.html [https://perma.cc/92LH-AGFU].
satisfies the second criteria for vigilantism: that the movement take place outside the legal system.

B. Extralegal

One of the most critical aspects of a vigilante movement is that the vigilantes act extralegally; that is, they act outside of the government and bear no legal or judicial authority to catch or punish transgressors. Instead, vigilantes are typically ordinary citizens who take the law into their own hands.\textsuperscript{93} Although vigilante groups can include members of the criminal legal system such as police officers or judges, those officials act as vigilantes only when engaging in unsanctioned violence and other activities not permitted by the legal system.\textsuperscript{94} For example, police officers have a history of leading lynch mobs,\textsuperscript{95} and today, there is certainly evidence that police officers routinely engage in race-motivated killings that are not (or at least should not be) authorized by the law.\textsuperscript{96}

The “ordinary citizen” aspect of vigilantism is even more apparent in online movements. A social media vigilante movement can be started by anyone, because anyone can create and publicly share content that sparks outrage.\textsuperscript{97} For example, the movement “Justice for Harambe” was created in response to the death of Harambe, a gorilla at the Cincinnati zoo, after Harambe grabbed a child who entered his enclosure.\textsuperscript{98} The initial story reported by the media described how zookeepers shot Harambe to ensure the boy’s safety.\textsuperscript{99} However, the story took on new life on social media when thousands of memes, posts, and messages criticized the zoo for its decision and then turned against the child’s mother for allowing her child to access the enclosure.\textsuperscript{100} The memes still widely circulated months later.

\textsuperscript{93} Asif & Weenink, supra note 42, at 165.
\textsuperscript{94} See id.
\textsuperscript{95} See Michael S. Rosenwald, A Black Man Accused of Rape, a White Officer in the Klan, and a 1936 Lynching That Went Unpunished, WASH. POST (July 19, 2020, 7:00 AM), https://www.washingtonpost.com/history/2020/07/19/atlanta-lynching-police-ku-klux-klan/ [https://perma.cc/2LPU-SJQ5].
\textsuperscript{97} Trottier, supra note 42, at 197.
\textsuperscript{98} Alex Abad-Santos, Harambe the Gorilla: The Zoo Killing That’s Set the Internet on Fire, Explained, Vox (June 1, 2016, 2:42 PM), https://www.vox.com/2016/5/31/11813640/harambe-gorilla-cincinnati-zoo-killed [https://perma.cc/42JU-5GE2].
\textsuperscript{99} Id.
\textsuperscript{100} Id.
Moreover, the extralegal aspect of vigilantism presupposes the existence of a criminal justice or legal system that could deal with (but fails to effectively address) the problem vigilantes are attempting to solve. Vigilantism, therefore, arises in situations where people believe that certain crimes or deviant behavior are not punished sufficiently to deter offenders. Vigilantism fills that void in order to “buttress weak institutions and establish law and order,” therefore causing vigilantes to feel justified in their actions. The KKK monitoring the Southern border is a good example of this phenomenon, as is the Anonymous collective hacking in the Steubenville rape case. In both examples, vigilantes acted to ensure the relevant legal system (immigration or criminal justice, respectively) actually fulfilled its purpose.

Vigilantism is therefore a form of “self-help” that people may turn to when they view the existing legal system as ineffective or corrupt. The reaction to perceived defects in the legal system leads to the necessary “premeditation” or “organization” that separates vigilantism from mere reaction to a criminal act as it is happening, such as a barroom brawl resulting from a man who caught someone making advances towards his girlfriend. Instead of reacting to a crime or a moral transgression as it happens, vigilantes act to punish past crimes or deviant behavior with the goal of deterring similar behavior in the future. Although high emotion is certainly involved in both scenarios, vigilantes allow for the passage of time so that harmed parties may seek out legal solutions and, when those solutions prove ineffective, take matters into their own hands.

The #MeToo movement is certainly motivated by “a general distrust in the expected efficacy of the law.” Many individuals who share their #MeToo stories did not go to the police, a behavior consistent with national sexual assault reporting statistics. According to the Rape, Abuse & Incest National Network (RAINN), in the United States, only 31

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101 Bateson, supra note 46, at 927.
103 Fritz, supra note 36, at 55; Asif & Weenink, supra note 42, at 1.
104 Strickland, supra note 67; Fairbairn & Spencer, supra note 73, at 485.
105 Asif & Weenink, supra note 42, at 12; Weishur, supra note 57, at 145.
percent of all sexual assaults are reported.\footnote{108} Indeed, scholars emphasize that “[s]exual violence against women continues to be one of the most heavily underreported crimes . . . despite the fact that surveys reveal it to be common.”\footnote{109}

These women could have gone to the police, but they did not. Though they often do not explain why in their #MeToo posts, the reasons are well documented by criminal justice literature. Many women report assault believing that there is no point in going to the police because they will not be believed\footnote{110} or their assaulter will not be arrested.\footnote{111} Statistics show that these women are correct: according to RAINN, only 5 percent of all sexual assaults lead to an arrest.\footnote{112}

These low arrest rates are not surprising given the fact that police are much more likely to under-investigate claims of sexual assault than any other violent crime.\footnote{113} When police fail to thoroughly investigate a crime, it is much less likely that a charge will be brought.\footnote{114} Multiple surveys of police officers reveal that, on average, officers estimate that 33 to 53 percent of all rape complaints they receive are false,\footnote{115} even though the


\footnote{109} Fairbairn & Spencer, supra note 73, at 479 (internal citations omitted).


\footnote{111} Marsha E. Wolf et al., Barriers to Seeking Police Help for Intimate Partner Violence, 18 J. FAMILY VIOLENCE 121, 124 (2003).


\footnote{114} Venena, supra note 113, at 177.

actual false reporting rate is between 2 and 10 percent.\textsuperscript{116} The impact of this misperception cannot be overstated. Police officers have a great deal of discretion regarding which cases to pursue,\textsuperscript{117} and if the investigating officer presumes that a woman is lying about her sexual assault,\textsuperscript{118} the officer is free to decide the woman’s claim is false without ever attempting to find corroborating evidence or even interview the accused.\textsuperscript{119}

Stories abound of police mishandling rape cases. From giving pep talks to accused rapists,\textsuperscript{120} to refusing to pursue cases,\textsuperscript{121} to being repeatedly accused of rape themselves,\textsuperscript{122} police

\begin{footnotesize}
\begin{enumerate}
\item[116] Kimberly A. Lonsway, \textit{Trying to Move the Elephant in the Living Room: Responding to the Challenge of False Rape Reports}, 16 VIOLANCE AGAINST WOMEN 1356, 1358, 1366 (2010); Avalos, \textit{supra} note 115, at 468. The police are more likely to disbelieve a claim of sexual assault if the victim knew (or was in a relationship with) her assailant, was intoxicated, or delayed reporting, even though research shows that these kinds of sexual assault are the most common. Kimberly A. Lonsway et al., \textit{False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault}, 16 VIOLANCE AGAINST WOMEN 1318, 1321–22 (2010).
\item[117] Fairharm & Spencer, \textit{supra} note 73, at 480.
\item[119] Avalos, \textit{supra} note 115, at 469–71, 477.
have a terrible track record for helping survivors of sexual assault. These numbers are even worse for Black women, who suffer under racial profiling and the United States’ long history with slavery, which treated Black women as sexual chattel.

For example, the Louisville Metro Police Department is notorious for its mistreatment of sexual assault cases and sexual assault survivors. A 2018 report by the Kentucky Center for Investigative Reporting revealed that the LMPD cleared 51 percent of its 2014–2016 rape cases “by exception,” meaning that the police closed the case using a designation typically reserved for exceptional circumstances “beyond law enforcement’s control: the suspect is dead, for example, or the victim asks them not to make the arrest.” Only 21 percent were cleared with an arrest. That year, Louisville had the sixth highest rate of clearing rape cases by exceptional means (more than any other major city), while the LMPD’s use of “clear[ing] by exception” for other violent crimes such as aggravated assault, homicide, or burglary ranged from just 3 to 11 percent. Recent news reports reveal that multiple LMPD officers have committed sexual assault themselves, often in uniform and while conducting police business. LMPD officials have also been accused of hiding...
evidence or refusing to turn over records relevant to these allegations. This reputation may have contributed to Matthew Landan’s accusers’ unwillingness to go to the police.

Women may also be reluctant to come forward for fear of being retraumatized by the criminal legal system. Police are known to forcefully interrogate women who come forward with claims of sexual assault, including subjecting them to a “digital strip search” where the police search through their phones to look for evidence. These women are told that if they do not submit to these searches, their case will be dropped. Worse than having their case dropped, if the police do not believe the survivor, they may be criminally prosecuted themselves for making a false claim.

If reporting rates of sexual assault are low, for the small number of people who do go to the police, the numbers only get worse. According to RAINN, 5 percent of all rape cases lead to an arrest, 2.8 percent result in a felony conviction, and 2.5 percent lead to incarceration. Moreover, even if convicted, perpetrators of sexual assault may serve little to no jail time. Prosecutors routinely agree to plea deals that give perpetrators shockingly low prison sentences. Even if the prosecutor does

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132  See Fairbairn & Spencer, supra note 73, at 479.
134  Lewis, supra note 133.
135  Avalos, supra note 115, at 471–74.
recommend substantial jail time, the judge can always depart from that recommendation. The case of Brock Turner made international headlines when Turner was sentenced to six months in jail for multiple sexual assault convictions despite the recommendations of the prosecutor and the haunting statement made by the survivor herself.\(^\text{138}\) Turner’s case is far from unique. In 2019, a restaurant manager in Missouri was given five years of probation after raping a woman while he was on probation for raping an underaged employee three years earlier.\(^\text{139}\) The judges in both cases faced public backlash; but, while the judge in Brock Turner’s case was recalled,\(^\text{140}\) the Missouri judge faced no repercussions whatsoever.\(^\text{141}\)

When it comes to sexual misconduct, the criminal legal system has failed women at every level. Not only is it extremely unlikely that a rapist will ever go to trial, but survivors are often mistrusted by the police, made to feel they are to blame for their own assaults, or even prosecuted for making false claims.\(^\text{142}\) It is no wonder, then, that women turn to each other to find safer spaces to talk about what happened to them.\(^\text{143}\)

However, even the safe space fostered by #MeToo has come under attack. Once stories of abuse started leading to consequences for the accused, #MeToo was criticized as punishing without due process,\(^\text{144}\) particularly because some of the accusations made against these men were done

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\(^\text{143}\) Women have also used social media to gather evidence of their assaults to counteract any argument that they consented to the encounter. Anastasia Powell, *Seeking Rape Justice: Formal and Informal Responses to Sexual Violence through Technosocial Counter-publics*, 19 THEORETICAL CRIM. 571, 576 (2015).

anonymously, or for acts that happened a long time ago. Similarly, the #MeToo movement was accused of being a “witch hunt” and carceral feminism. Some scholars argue that #MeToo reverses the burden of proof—accusers’ words are taken more seriously and the accused seems to bear the burden to prove their innocence. Recent surveys show that the public shares this critique of #MeToo: a majority of men and women surveyed fear that men will be falsely accused of sexual assault or harassment.

These criticisms are also leveled at vigilantism. Vigilantism imposes extralegal consequences on its targets without the restraints of formal due process. Indeed, vigilantism is not at all concerned with due process; it is concerned with obtaining justice. Perhaps because they move without due process constraints such as evidentiary standards, lengthy review periods, and opportunities for the accused to be heard, vigilante movements do sometimes target the wrong people, particularly when they are formed in response to conspiracy theories. For example, after reading stories on Breitbart and Infowars about a child sex trafficking ring run from the basement of a Washington, DC pizza restaurant, a North Carolina man entered the restaurant armed with an AR-15 semiautomatic rifle, a handgun, and a knife looking for the children in a basement that did not exist. These errors, which can be fatal, may lead to the public turning their backs on the

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149 Ashwini Tambe, Reckoning with the Silences of #MeToo, 44 FEMINIST STUD. 197, 200 (2018).
150 North, supra note 31.
movement. For example, a vigilante movement in the United Kingdom that targeted pedophiles lost public support when the group mistakenly attacked pediatricians instead.\textsuperscript{154}

However, when applied to #MeToo, these due process criticisms often miss the point. Due process does provide a safeguard against false convictions by requiring “a clear path and procedures by which an accused can successfully contest allegations” and judgment by “a jury or other independent decision-maker” rather than the public.\textsuperscript{155} However, the Due Process Clauses of the Fifth and Fourteenth Amendments do not apply without a government-instigated deprivation of life, liberty or property—without those deprivations, the clauses are simply not relevant.\textsuperscript{156} Accordingly, unlike the typically violent consequences wrought by vigilante movements, such as the hangings in the Old West, the consequences for those named by #MeToo do not come close to deprivations of liberty or property that implicate the Due Process Clause. Public shaming, loss of income, or losing an election are social and economic losses to which the Due Process Clauses do not apply. Simply put, #MeToo’s consequences are not dire enough for the Constitution to become involved. And yet, it is these consequences that led to another area of criticism against #MeToo.

C. Consequences

As noted above, a vigilante movement by necessity metes out consequences to its targets, which may lead to criticisms that the punishments are too severe—even when the movement targets the right individuals.\textsuperscript{157} As noted by scholars, a key aspect of vigilantism is that it involves an exertion of power.\textsuperscript{158} Vigilantes’ primary means of coercing targets to change their behavior is by exacting consequences upon them.\textsuperscript{159} At the most extreme, vigilantes will use force or the threat of force.\textsuperscript{160} However, vigilantes also employ less extreme forms of punishment such as shaming.\textsuperscript{161}

\textsuperscript{157} For example, in Maine, lobstermen resort to violence and even murder to protect their property. Corson, supra note 66.
\textsuperscript{158} Bateson, supra note 46, at 923–24.
\textsuperscript{159} Id.
\textsuperscript{160} Johnston, supra note 40, at 226–27.
\textsuperscript{161} Asif & Weenink, supra note 42, at 164.
The public shaming of a person by name (and the public denunciation that follows) is essential for vigilantism in an online context. Shaming can swiftly gain steam and ultimately lead to severe real-world consequences. For example, about a month after Lindsey Stone’s friend posted a photo of her mocking a “Silence and Respect” sign in Arlington National Cemetery, the post went viral, leading to Stone being fired from her job and going into hiding for months.

Although the movement has led to criminal prosecutions, #MeToo largely operates outside the criminal legal system and does not advocate for the use of extrajudicial force or violence against perpetrators. Instead, the primary punishment it metes out is public shaming of the accused, which most often leads to social or economic consequences. #MeToo’s viral trajectory is at least partially due to the naming of powerful men, which makes these stories more salacious for mainstream media. When the media began reporting on #MeToo, more people became aware of it and contributed online, which led to the movement growing exponentially and spreading globally.

As with other vigilante movements, the #MeToo movement is also criticized for leading to unfair or disproportionate punishments for the accused. According to some scholars, vigilantes typically exact disproportionate punishment due to their personal stakes in the movement, which may lead them to “overestimate the costs of crime to society as a whole.” As noted above, #MeToo is also criticized for “going too far” by causing men to be summarily fired from their jobs and ostracized by their peers based on anonymous,
unsubstantiated, or even retracted claims.\textsuperscript{171} Although there is a stray story here and there about a man suffering as a result of a false #MeToo allegation,\textsuperscript{172} the vast majority of men that are reportedly penalized because of #MeToo suffer these repercussions after an investigation or as a result of multiple credible complaints.\textsuperscript{173} Many men suffer no consequences at all.

And yet, the perception of #MeToo as a “witch hunt” persists, largely due to the media’s emphasis on the accusations of individual perpetrators. Both mainstream and social media reporting of accusations against named individuals often leads to a “trial by media” that focuses on the characteristics of the accused and the accuser, instead of the act of violence or the prevalence of those acts in society.\textsuperscript{174} Critics note that trials by media provide “a superficial, short-lived rearrangement of justice through an unprecedented deployment of shaming and publicity that do not address the structural problem of sexual misconduct.”\textsuperscript{175} Because of this, critics argue, #MeToo can never effectuate social justice on a meaningful scale.\textsuperscript{176} Moreover, by focusing on shaming transgressors, participants in the #MeToo movement open themselves up to a sizeable backlash, as well.

II. CONSEQUENCES OF VIGILANTISM: BACKLASH

Although vigilantes may view themselves as justified (and this feeling may be shared by their communities), their actions are, by definition, not permitted by the law and may lead to legal consequences for the vigilantes themselves.\textsuperscript{177} At a certain point, most, if not all vigilante movements lose public support, which opens the vigilantes up to backlash. As shown below, those who participate in #MeToo may be targeted with legal consequences, in the form of civil lawsuits or criminal prosecutions, and extralegal consequences in the form of social stigma and cyber harassment.

\begin{itemize}
  \item \textsuperscript{171} Borysenko, supra note 145.
  \item \textsuperscript{172} Id.
  \item \textsuperscript{174} Pipyrou, supra note 106, at 416.
  \item \textsuperscript{175} Id.
  \item \textsuperscript{176} Id. at 417.
  \item \textsuperscript{177} See Fritz, supra note 36, at 63 (explaining that, although vigilantes are “authorized by no law,” they believe their actions are justified).
\end{itemize}
A. Legal Backlash: Defamation

Despite its successes, #MeToo carries danger for those who name names. By publicly accusing someone of sexual assault or harassment, the accuser also identifies themself and can therefore be targeted. Sometimes, the accused men themselves turn to the criminal or civil legal systems to fight back against their accuser.

1. Criminal Defamation

Internationally, multiple women who named their abusers as part of their country’s #MeToo movement have been sued or even criminally prosecuted for defamation. In Sweden in 2017, Cissi Wallin named her rapist on social media, which was the catalyst that brought #MeToo to Sweden. Her assailant never faced criminal charges (her original report was dropped due to insufficient evidence), but Wallin herself was later criminally prosecuted and, in 2019, convicted of criminal defamation. Her alleged assailant was a famous Swedish journalist, and although public figures are normally unable to sue for defamation due to their self-elected positions in the limelight, the trial court determined that Wallin’s assailant was not a public figure and allowed his suit against her to go forward. The court did not reach the question of whether Wallin’s #MeToo posts were truthful because, under Swedish law, truth is not a complete defense to defamation. In 2021, Wallin was prosecuted again for defamation for including the story (and again naming the alleged assailant) in her memoir, though she was not convicted again.

A similar series of events took place in France. Sandra Muller, a journalist and founder of the French #MeToo movement, which uses the contributory hashtag


179 *Id.* Criminal gross defamation in Sweden carries a potential sentence of up to two years in jail. BROTTSBALKEN [BRB] [Criminal Code] 5:2 (Swed.). Wallin was ordered to pay a 5,000 kronor fine and pay her rapist’s legal fees, an additional 90,000 kronor or approximately $9,400. *Swedish #MeToo Activist Told to Pay Damages to Man She Accused of Rape*, LOCAL (Dec. 9, 2019, 3:04 PM), https://www.thelocal.se/20191209/swedish-metoo-activist-told-to-pay-damages-to-man-she-acquitted-of-rape/ [https://perma.cc/2Q9U-Y33R].

180 Nordberg, *supra* note 178.

181 *Id.*

#balancetonporc (“squeal on your pig”), lost a civil defamation lawsuit and was ordered to pay damages to Eric Brion, a former TV channel executive, for her tweet alleging that he made sexually explicit comments to her.\footnote{Claire Parker, Woman Behind French ‘MeToo’ Movement Fined for Defamation, CTV News (Sept. 26, 2019, 12:54 AM), https://www.ctvnews.ca/world/woman-behind-french-metoo-movement-fined-for-defamation-1.4611101?cache=yes%3FcllpId%3D1745623 [https://perma.cc/63UB-MDJM].} Brion admitted he made the comments, but argued that his comments about her body and his statement that he wanted to sleep with her did not fit the legal definition of harassment because the remarks did not “involve repeated or ‘serious’ pressure.”\footnote{News Wires, French #MeToo Founder Wins ‘Historic’ Defamation Appeal, France 24 (Jan. 4, 2021, 8:33 AM), https://www.france24.com/en/france/20210401-french-meto-founder-wins-historic-defamation-appeal [https://perma.cc/63NC-2E76].} The court agreed, criticizing Muller for calling Brion a “pig” via use of the trending hashtag and for inappropriately connecting his behavior to Harvey Weinstein.\footnote{Court Orders French #MeToo Founder to Pay Damages for Defamation, EURONEWS (Sept. 26, 2019), https://www.euronews.com/my-europe/2019/09/26/court-orders-french-meto-founder-to-pay-damages-for-defamation [https://perma.cc/WY4Y-VUY2].} That decision was reversed on appeal in 2021, with the Court of Appeal noting that Muller “acted in good faith.”\footnote{Wires, supra note 184.}

In Finland in 2018, four women were convicted of slander against singer Tomi Metsäketo for referring to Metsäketo as a “serial molester” and a rapist” on Twitter and Facebook.\footnote{Four Women Convicted, Fined for Slandering Singer in #MeToo-Related Social Media Posts, YLE (May 10, 2018), https://yle.fi/news/3-10442632.} A man and a woman in China were convicted of defamation for posting an article online that claimed a prominent journalist groped the female author in a hotel room.\footnote{2 Convicted of Defamation in Blow to China’s #MeToo Movement, INDEP, https://www.independent.co.uk/news/2-convicted-of-defamation-in-blow-to-chinas-metoo-movement-china-court-intern-movement-movement-b1783765.html [https://perma.cc/5P8W-XF6N].} Similar lawsuits against survivors have also been brought in India and Georgia.\footnote{See Emily Schmall, Journalist Cleared of Defamation Charge Receives India’s #MeToo, N.Y. TIMES (Mar. 18, 2021), https://www.nytimes.com/2021/03/28/us/priyaramani-metoo-india-defamation-suit.html; Giorgi Lomsadze, On Trial in Georgia: The Right to Compare a Person to a Reproductive Organ, EURASIANET (July 11, 2018), https://eurasianet.org/the-right-to-compare-a-person-to-a-reproductive-organ-on-trial-in-georgia [https://perma.cc/U3X3-L6VH]. The complainant, a former NGO chief who was accused by several women of harassment, is specifically requesting that his accusers be ordered to publicly state that he is not “a total prick.” \textit{Id.} As Georgian journalists have noted, the case was certainly “novel.” \textit{Id.}}

## 2. Civil Defamation Lawsuits

In the United States, twenty-four states currently criminalize defamation, and many of these laws have withstood
constitutional challenges. However, there is no evidence that these laws are employed against statements made as part of the MeToo movement. Instead, the most common civil legal consequence for MeToo accusers in the United States is civil defamation lawsuits. Even outside the MeToo movement, defamation lawsuits are an increasingly common tool employed by individuals insulted on social media. Recent cases include a man who successfully sued his ex-wife for defamation after she insulted him on his new girlfriend’s Facebook wall, and a woman who received a $500,000 settlement after another woman insinuated that she had “[gotten] drunk” and killed her child who recently died—and not through the mother’s fault.

MeToo triggered several high-profile defamation cases in the United States. For example, Director Brett Ratner brought a defamation lawsuit against a woman who posted on Facebook that he “preyed on her” while she was drunk. The case was ultimately settled and “no money was exchanged.” In a rather complex case with multiple lawsuits and countersuits, music producer Lukasz Gottwald, better known as Dr. Luke, sued singer Kesha in response to a text she sent to singer Lady Gaga claiming that Gottwald raped both Kesha and singer Katy Perry. This text was sent only to Lady Gaga and was made

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185 Id. These suits can cut both ways, though. Multiple women have filed defamation lawsuits against their alleged harassers, including Bill Cosby, Bill O’Reilly, Roy Moore, and Donald Trump, for calling them liars. Daniel Jackson, Sex-Assault Accusers Turn to Defamation Lawsuits in MeToo Era, COURthouse NEWS SERV. (Jan. 25, 2018), https://www.courthousenews.com/sex-assault-accusers-turn-to-defamation-lawsuits-in-metoo-era/ [https://perma.cc/U87U-UGSK].

public during the litigation between Gottwald and Kesha.\textsuperscript{197} When Perry later stated in a deposition that Gottwald never raped her, Kesha lost that part of the lawsuit.\textsuperscript{198} Gottwald’s defamation claim against Kesha regarding her statement that he also raped her is still ongoing.\textsuperscript{199} There are also current defamation cases against Evan Rachel Wood, who is being sued by her former partner Marilyn Manson, whom she accused of “horrifically abus[ing]” her.\textsuperscript{200} Moira Donegan is also facing a defamation lawsuit, filed against her by one of the named journalists in the “Shitty Media Men” spreadsheet she created and shared with other women.\textsuperscript{201}

3. Online Defamation and Twibel

Defamation seems to be the most obvious way for men to retaliate against the #MeToo movement within the legal system. Generally, defamation exists when “a publication contains a false statement reflecting injuriously on a person’s reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in the person’s trade, business or profession.”\textsuperscript{202} Mere opinions are not defamatory, rather, the contested statements must be provably false statements of


\textsuperscript{202} Paul M. Coltoff et al., 53 C.J.S. Libel and Slander; Injurious Falsehood § 1 (Feb. 2023 update).
fact. Moreover, under common law, defamation per se allows plaintiffs to forgo proving that their reputation has actually been injured as long as the statement falls into one of the following categories: “(1) criminal conduct or offense; (2) a loathsome disease; (3) misconduct, lack of integrity or inability in a person’s trade, profession, office, or occupation; or (4) sexual misconduct.”

Defamation is a longstanding tort with an almost universal definition in the United States. However, because it was formulated with print media in mind, when it is applied to statements posted online or on social media, things get more complicated. Print media differs markedly from social media in how quickly and widely the information can be transmitted as well as by whom. Today, a statement can be made public almost instantaneously instead of waiting for several copies to be physically printed and distributed. Moreover, public speech is no longer the sole province of journalists with fact-checkers and copyeditors at hand, which means that internet speech also has fewer safeguards for veracity.

As early as 2009, courts began to entertain defamation cases based on statements made on Twitter, which are now referred to as “Twibel” cases. Other cases were brought around the same time for posts made on other social media websites such as Facebook or Myspace. As these cases show, some aspects of defamation law, once well-settled, become difficult to apply to the rough-and-tumble world of internet speech. More specifically, courts have had to develop internet-specific standards for assessing the context of an online publication, the applicability of the First Amendment, and when and how internet speech is both published and republished.

203 See id.


205 *Map of States with Criminal Laws Against Defamation*, supra note 190.


207 The lack of fact-checking on social media posts has had a negative impact in several areas, including public perception of traditional media. See Elmie Nekmat, *Nudge Effect of Fact-Check Alerts: Source Influence and Media Skepticism on Sharing of News Misinformation in Social Media*, 6 SOC. MEDIA + SOCY 1, 1–3, 9–10 (2020).


a. Context

Social media differs from traditional media formats such as newspapers and television in numerous pertinent aspects. Most obviously, the majority of social media posts are written by laypeople, not trained journalists with fact-checkers.\(^2\) The context in which a statement is made impacts whether the audience views the statement as one of fact that can or should be accepted as true. A statement made within a *New York Times* article is more likely to be accepted as true than if the same statement were made by an unknown person on Twitter.

Moreover, social media posts are typically written using informal language, which courts find causes the statements to look more like hyperbole or opinion than statements of fact.\(^3\) Similarly, many social media sites allow for anonymous users, which courts also find makes the users’ posts appear more like opinion.\(^4\) Likewise, courts remain mindful of the entire context of social media conversations—including strings of tweets or the use of hashtags or hyperlinks—when considering whether a statement could be read as a statement of fact.\(^5\) Because context is key in such cases, scholars suggest courts familiarize themselves with the different kinds of social media platforms and the “conventions of discourse” each employs.\(^6\) #MeToo posts should likewise be viewed in context, including the identity of the speaker and whether the post was part of a larger conversation including specific allegations.

b. First Amendment Protection

Although the First Amendment generally applies only to government restrictions on speech, it can provide some level of protection to those sued for defamation, including #MeToo participants. Although defamation is not protected under the First Amendment, courts have long recognized that a frivolous defamation lawsuit may chill legitimate speech.\(^7\) For that


\(^{3}\) See, e.g., Giduck v. Niblett, 408 P.3d 856, 868 (Colo. App. 2014) (“[T]he fact that these statements were placed in an online community where anonymous individuals can express highly biased opinions weighs in favor of finding these statements to be opinion.”).


\(^{5}\) Id. at 164–65.

\(^{6}\) Id. at 170.

reason, defamation and the First Amendment have always had a complicated, intertwined relationship. Originally, public officials weaponized libel and slander lawsuits to prevent the public from criticizing them or petitioning the government for change.\textsuperscript{216} By suing for defamation, public officials could ultimately silence their opponents by miring them in a costly and time-consuming legal dispute.\textsuperscript{217}

In addition to silencing individual citizens, public officials also used defamation lawsuits to silence the press on major political issues.\textsuperscript{218} However, this practice changed dramatically with the overhaul of the defamation standard in the Supreme Court case \textit{New York Times Co. v. Sullivan}.\textsuperscript{219} That case involved an ad taken out in the \textit{New York Times} by civil rights leaders to raise funds for the movement.\textsuperscript{220} The ad described a prior demonstration in Alabama with some minor factual inaccuracies such as “the number of arrests of protestors, the songs protestors sang, and the punishments given to student protestors.”\textsuperscript{221} At the time, under Alabama Law—and a majority of other state laws—any false statements that could damage a person’s reputation were legally defamatory no matter the defendant’s intent or the identity of the speaker.\textsuperscript{222}

Believing the advertisement to reflect negatively upon the Alabama police, then Police Commissioner L.B. Sullivan sued the \textit{New York Times} for defamation and won at trial, but the case was ultimately decided by the Supreme Court.\textsuperscript{223} In reversing the lower court judgment and granting relief to the \textit{New York Times}, the Supreme Court recognized the importance of protecting speech critical of public officials—those who open themselves up to criticism by their voluntary involvement in the public sector.\textsuperscript{224} In order to protect this sort of speech, the Court modified the standard for proving defamation as it relates to public officials. For a public official to win their defamation case,

\begin{itemize}
\item \textsuperscript{216} A Brief History of SLAPP Suits, ACLU Ohio, https://www.acluohio.org/en/brief-history-slapp-suits [https://perma.cc/9A5C-XPH4].
\item \textsuperscript{217} Id.
\item \textsuperscript{218} George W. Pring, SLAPPs: Strategic Lawsuits Against Public Participation, 7 PAC ENVTL. L. REV. 3, 8 (1989).
\item \textsuperscript{219} N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (introducing the “actual malice” standard for public officials suing for defamation regarding statements made relating to official conduct).
\item \textsuperscript{220} Id. at 256–57.
\item \textsuperscript{221} Shena Allen, Defamation for Hire: Revisiting Sullivan in the Age of Sponsored Corporate Cyber-Smearing, 12 ALA. C.R. & C.L. L. REV. 109, 123 (2020).
\item \textsuperscript{222} See John Bruce Lewis & Bruce L. Ottley, New York Times v. Sullivan at 50: Despite Criticism, the Actual Malice Standard Still Provides “Breathing Space” for Communications in the Public Interest, 64 DePaul L. REV. 1, 16–18 (2014).
\item \textsuperscript{223} Allen, supra note 221, at 123.
\item \textsuperscript{224} Sullivan, 376 U.S. at 283.
\end{itemize}
they must show actual malice: that the publisher knew the statement was false or had a "reckless disregard" for its truth.\textsuperscript{225} This decision paved the way for the Civil Rights Movement and other media outlets to continue publicizing their work without fear of retaliatory defamation lawsuits.\textsuperscript{226}

In \textit{Sullivan}, the Court applied the actual malice standard to speech relating to a public official's official conduct. Since \textit{Sullivan}, the Court has extended the public official standard to public figures if the statement relates to a matter of public concern, noting that speech on matters of public concern "occupies the highest rung of the hierarchy of First Amendment values."\textsuperscript{227} Due to this kind of speech's importance to the public, it is entitled to "special protection" under the First Amendment.\textsuperscript{228}

However, the greater protections afforded to speech relating to public officials and public figures did not put an end to defamation lawsuits against publishers and citizens. In the 1980s, retaliatory defamation lawsuits became known as "SLAPPs" or "Strategic Lawsuits Against Public Participation."\textsuperscript{229} Taking their direction from the Supreme Court, various state courts adopted more exacting standards for defamation cases where the statement at issue touched on a matter of public concern.\textsuperscript{230} More specifically, these new standards mitigated the threat of frivolous defamation lawsuits by facilitating the rapid dismissal of cases or, at least, requiring a heavier burden of proof for the plaintiff.\textsuperscript{231} Various state legislatures also embraced this line of thinking by enacting anti-SLAPP statutes to lessen the financial burden of litigation on defamation defendants.\textsuperscript{232} Today, anti-SLAPP statutes are primarily raised by journalists as a defense to defamation suits,\textsuperscript{233} but generally apply when the allegedly defamatory statement relates to a topic of public concern.\textsuperscript{234}

\textsuperscript{225} Id. at 279–80.
\textsuperscript{226} Lewis & Ottley, \textit{supra} note 222, at 63.
\textsuperscript{228} Id.
\textsuperscript{232} Id. at 801, 816.
\textsuperscript{234} Middlecamp, 500 F. Supp. 3d at 769.
According to the Supreme Court,

[s]peech deals with matters of public concern when it can “be fairly considered as relating to any matter of political, social, or other concern to the community,” . . . or when it “is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” 255

Some state courts adopt an even broader definition: New York considers a matter of public concern to be “a dispute that in fact has received public attention because its ramifications will be felt by persons who are not direct participants.” 256

Determining whether a statement touches on a matter of public concern requires an examination of the “content, form, and context” of that speech, “as revealed by the whole record.” 257 As noted above, statements on social media carry a unique context that courts are just beginning to grapple with. The few courts that examine #MeToo statements in defamation cases engage in a deep analysis of the text and context of the social media posts. For example, #MeToo posts that call out one or a few men for engaging in sexual assault or harassment led at least one court to find that the matter was more of a private concern and therefore was not protected by the First Amendment. 258

However, other courts have found that similar posts did implicate matters of public concern because the speaker linked their statement to the larger #MeToo movement. For example, a judge in the Eastern District of New York found that a social media post touched on a matter of public concern because the speaker stated she was joining the “talk about sexism in the music industry by sharing her own experiences.” 259 Another District Court in New York reached the same conclusion when examining a post with a #MeToo hashtag that contained “extensive criticism of the law enforcement investigation of [the defendant’s] sexual assault complaint.” 260 Finally, even before the #MeToo movement began, a District Court in Minnesota

260 Goldman v. Reddington, No. 18CV3662RPKARL, 2021 WL 4099462, at *4 (E.D.N.Y. Sept. 9, 2021); see also Johnson v. Freborg, 978 N.W.2d at 926 (Wheelock, J., dissenting) (poster stated she was “[f]eeling fierce with all these women dancers coming out,” and included the hashtags #MeToo, and #dancepredators).
found a tweet touched on a matter of public concern because it included a request to retweet “to help keep women safe” and was posted on the @CardsAgstHarassment Twitter account, “a publicly available platform that regularly addressed issues of harassment and violence against women.”

Based on this case law, #MeToo posts may also benefit from First Amendment protection if a court finds that they touch on a “matter of public concern.” If #MeToo posts touch on a matter of public concern, the accuser’s speech is protected so long as they did not speak with actual malice. This protection is essential to protect #MeToo participants from the financial cost of being sued and the stress of potentially facing a former harasser in court, which may act as a deterrent for women who would otherwise come forward. Anti-SLAPP laws lessen the financial impact of being sued for defamation by preventing the plaintiff from dragging the case out and forcing the survivor to incur hefty legal fees. Indeed, without anti-SLAPP protection, these cases could go on for years: the Landan case is ongoing today, four years after following the initial filing, which is due in part to Kentucky’s lack of an anti-SLAPP statute.

c. Republication and the Single Publication Rule

The third defamation concept courts examine in the online context is the republication standard in combination with the single publication rule. According to the Restatement (Second) of Torts, the republication standard states that anyone who repeats defamatory information is considered a “publisher” of the allegedly defamatory statement if they know or have reason to know of its “defamatory character.” Such a “republisher” may be “subject to liability just as if he had published it originally,” even if the republisher attributes the statement to the original author or states that it is just a rumor. The republication standard therefore expands who can

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242 Haymarket Whiskey Bar v. Moore, No. 17-CI-006369 (Ky. Cir. Ct.).
246 William E. Buelow III, Re-establishing Distributor Liability on the Internet: Recognizing the Applicability of Traditional Defamation Law to Section 230 of the
be held liable for a defamatory statement. At first blush, this standard appears to hold every speaker liable every time a defamatory statement is repeated. Thus, this standard could have immense implications for social media where forwarding, quoting, and retweeting are commonplace.

However, the republication rule is limited by the “single publication rule,” which restricts a defamation action to the first instance of publication and not any republication thereafter. More specifically, the single publication rule states that multiple copies of the same libelous publication cannot be counted as separate defamation publications unless each publication was intended to reach a different audience. This rule protects newspapers from multiple defamation lawsuits stemming from the reprinting of a single article.

As with the republication rule, the single publication rule came about in an era where print media was the only form of publication, and newspapers and magazines published hundreds or thousands of copies at once. The typical example of a “separate audience” for the single publication rule is when an evening edition of a newspaper runs the same libelous story as a morning edition. Historically, this example makes sense: typically, people only consumed either the morning or evening edition of a newspaper. However, newspapers no longer run morning and evening editions. In fact, now newspapers typically publish their content online before sending it to print in order to get the news out as fast as possible. It is therefore unclear how this rule would apply to online publications that reach millions of people simultaneously and may be shared to a new audience at any time without the publisher’s knowledge.

The first court to apply the single publication rule to an online statement was the New York Court of Appeals in *Firth v. State*. In that case, the court decided that the first time a

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249 Id.

250 Id.

251 Id.


statement is published on the internet is its only publication. Unless the statement is altered later, the statement is not “republished” every time someone new looks at the webpage.\textsuperscript{255} The few other cases that address this issue came to the same conclusion: merely referencing the article or approving of it does not create a separate publication.\textsuperscript{256}

More specifically, simply posting a hyperlink to an article does not constitute a separate publication, even if doing so may increase the number of people who read it.\textsuperscript{257} This is because a hyperlink does not change the original publication.\textsuperscript{258} Instead, social media links to existing articles merely expand the reach of the original publication and do not change the identity of the publisher.\textsuperscript{259} This rationale is especially apt when the original publication already has a large audience by virtue of its existing on a prominent, publicly accessible news website.\textsuperscript{260} Moreover, even if text is added to a posted link (such as in a tweet), as long as the text does not name the plaintiff or reiterate the defamatory content, the single publication rule applies.\textsuperscript{261} This is because such references merely call attention to the existence of the article and do not present the defamatory content themselves.\textsuperscript{262}

In other words, unless the republication was defamatory itself by separately stating the defamatory content, the single publication rule applies to protect republication.\textsuperscript{263} As with the previously discussed defamation rules, the single publication rule appears to protect some #MeToo participants, especially if they only retweet a statement or news article. However, as shown by the recent Amber Heard–Johnny Depp defamation trial, the law is not nearly so clear or predictable in its outcomes.

B. Heard–Depp Trial

All the novel issues regarding the nexus of #MeToo and defamation law were at the forefront of the recent Johnny Depp versus Amber Heard defamation case. Depp and Heard were

\textsuperscript{255} Id.

\textsuperscript{256} \textit{In re} Philadelphia Newspapers, 690 F.3d 161, 174 (3d Cir. 2012).


\textsuperscript{258} Lokhova v. Halper, 995 F.3d 134, 143 (4th Cir. 2021).

\textsuperscript{259} See Jankovic v. Int'l Crisis Grp., 494 F.3d 1080, 1087 (D.C. Cir. 2007).

\textsuperscript{260} See Clark v. Viacom Int'l Inc., 617 F. App’x 495, 506 (6th Cir. 2015).

\textsuperscript{261} Id.

\textsuperscript{262} Id. at 507.

married in 2015 and Heard filed for divorce in May 2016.264 Four
days later, she obtained a temporary restraining order against
Depp, alleging that Depp physically abused her; usually while
he was under the influence of drugs or alcohol.265 Depp
responded by alleging that Heard was lying to get more money
in the divorce.266 In August 2016, Depp and Heard settled their
divorce case and Heard received a $7 million settlement. As a
result of that settlement, Heard withdrew her restraining order
petition and her request for spousal support.267 The former
couple also produced a joint statement to the press that included
two key sentences: “[n]either party has made false accusations
for financial gain” and “[t]here was never any intent of physical
or emotional harm.”268

In 2018, Depp sued the Sun, a British tabloid newspaper,
in the High Court of Justice in the United Kingdom for calling
him a “wife-beater.”269 The lawsuit against the Sun went to a
bench trial in July 2020.270 Under British law, the Sun had the
burden to prove its report was at least substantially true.271
During the trial, Heard testified for several days regarding
Depp’s abuse, and Depp countered her testimony with
allegations that she was the actual abuser.272 Ultimately,
the judge found that there were fourteen separate incidents of
potential abuse towards Heard and twelve of them were proven
as true.273 Depp sought to appeal the verdict but was rejected by
the appeals court, which stated the appeal did not have “any real
prospect of success.”274

264 Jacob Sarkisian et al., A Complete Timeline of Johnny Depp and Amber
Heard’s Tumultuous Relationship, INSIDER (Dec. 19, 2022, 10:20 AM),
265 Id.
266 Id.
267 Id.
268 Id.
269 Elahe Izadi & Sarah Ellison, Why Johnny Depp Lost His Libel Case in the
U.K. but Won in the U.S., WASH. POST (June 1, 2022, 9:05 PM),
https://www.washingtonpost.com/media/2022/06/01/johnny-depp-libel-law-uk-us/
[https://perma.cc/MMJ2-PMBP].
270 See id.
271 Defamation Act 2013 s.2. (U.K.).
272 Izadi & Ellison, supra note 269.
273 David Sillito, Johnny Depp Loses Libel Case over Sun ‘Wife Beater’ Claim,
E9LU].
274 Mathilde Groppo, The Show Won’t Go On—Permission to Appeal Refused in
the Depp Libel Claim (Depp II v. NGN and Another), LEXISPSL (Apr. 1, 2021),
https://www.lexisnexis.com/uk/lexispsl/disputeresolution/document/412012/62Bj-2FS3-
GXFQ-8143-00000-00/The_show_won_t_go_on_permission_to_appeal_refused_in_the_
Depp_libel_claim__Depp_H_v_NGN_and_another_.; Depp v. News Grp. Newspapers,
Also in 2018, Heard wrote an opinion piece for the *Washington Post* titled, “Amber Heard: I spoke up against sexual violence—and faced our culture’s wrath. That has to change.” 275 The article focused on the backlash Heard faced during her divorce from Depp, though it never mentioned him by name. 276 In 2019, Depp sued Heard for defamation in Virginia State Court based on some of the statements contained in her opinion piece. 277

That defamation trial began in 2022 in Alexandria, Virginia. 278 Depp argued the *Washington Post* article “falsely implies [Heard] was physically and sexually abused by Depp when the actors were married,” 279 and that, as a result of the article’s publication, Depp lost out on work. 280 The three statements Depp focused on were the title of the article, “I spoke up against sexual violence—and faced our culture’s wrath,” as well two phrases in the article itself: that Heard was a “public figure representing domestic abuse” and that she had the “rare vantage point of seeing, in real time, how institutions protect men accused of abuse.” 281 Virginia defines defamation as a published “false statement of fact” that harms the plaintiff’s reputation in the community and which the defendant either knew was false or “reckless[ly] disregard[ed]” its falsity. 282 Considering that a judge in the United Kingdom already found that Amber Heard was


276 Id.


278 Both Depp and Heard lived in California at the time. Depp stated that he sued Heard in Virginia because that is where the Washington Post is located but legal experts argued that he may have actually done so because of Virginia’s weak anti-SLAPP law. Lydia Wheeler, Depp’s Choice of Virginia Trial in Heard Lawsuit Shows Strategy, BLOOMBERG L. (May 16, 2022, 5:30 AM), https://news.bloomberglaw.com/us-law-week/depps-choice-of-virginia-trial-in-heard-lawsuit-shows-strategy [https://perma.cc/T3AK-FGGH].

279 Id.

280 Id.

281 Id.

abused by Depp, it seemed that Heard would be completely immune from liability based on the veracity of her statements. In fact, the statements Heard made in her op-ed did not even accuse Depp of abusing her; they simply asserted that she became associated with domestic violence which led to a public opinion backlash against her.283 Given the legal history and the actual content of the op-ed, it seemed unlikely that Depp could prove Heard’s statements were false or that she acted with the requisite intent. Heard was also able to avail herself of Virginia’s anti-SLAPP law when the judge ruled that her statements were on a matter of public interest, though this did not stop the case from proceeding to trial.284

During the trial, it became clear that Heard did not actually write any of the statements that formed the basis of the defamation claims against her.285 Specifically, as her lawyers pointed out, the ACLU wrote the article itself, which contained two of the three statements at issue, and the third statement at issue, the title of the article, was written by a Washington Post editor.286 Consequently, Heard was even more removed from these allegedly defamatory statements.

Depp’s lawyers argued that Heard “republished” the article when she tweeted its link, therefore making her just as liable for the content of the article as the authors themselves.287 Virginia’s republishation rule, adopted in 1957 in the Virginia Supreme Court case Weaver v. Beneficial Finance, is nearly identical to the rule included in the Restatement of Torts: that “[a]s a general rule, each time defamatory matter is brought to the attention of a third person there is a new publication constituting a separate cause of action against the person responsible for such new publication.”288 Despite this, the court instructed the jury on the single publication rule. Jury instruction DD, entitled “Republication,” told the jury they could only find that Heard republished the article if she distributed it with the “goal of reaching a new audience.”289 This instruction

283 Heard, supra note 275.
284 Associated Press, supra note 277.
286 Id.
287 Id.
also stated that merely including a hyperlink does not constitute republication but “adding content” to the link might.\textpermbibitem\cite{290} However, the instruction did not elaborate on what “adding content” might mean.

When linking to the \textit{Washington Post} article, Heard included the following text in her tweet: “Today I published this op-ed in the \textit{Washington Post} about the women who are channeling their rage about violence and inequality into political strength despite the price of coming forward. From college campuses to Congress, we’re balancing the scales.”\textpermbibitem\cite{291} Heard’s tweet did not mention Depp (though, to be fair, neither did the \textit{Washington Post} article) and was not included in the list of potentially defamatory statements to the jury. In addition, although her tweet stated that she published the \textit{Washington Post} article, that statement did not seem to prevent her from arguing otherwise in court.

Arguably, it should have been easier for Heard’s lawyers to defend their case than it was for the \textit{Sun}’s lawyers. Heard did not have the burden to prove that her statements were true, and the statements she made in the \textit{Washington Post} about her own experiences as a domestic violence survivor were much more benign than the \textit{Sun}’s statement that Depp was a “wife beater.” The Virginia judge, Penney Azcarate, also allowed Heard’s attorneys to file a counter defamation claim against Depp’s lawyers for labeling her claim as a “hoax.”\textpermbibitem\cite{292}

In the trial itself, Heard’s attorneys argued that her statements concerned events from after her marriage (i.e., backlash for speaking out about domestic violence) and that the jury should focus on those events, rather than Depp’s allegations that Heard was the actual abuser during their marriage.\textpermbibitem\cite{293} Ultimately, the jury found that all three of the contested statements were defamatory and awarded Depp $15 million; $5

\begin{itemize}
\item \textpermbibitem\cite{290} Id.
\item \textpermbibitem\cite{291} JoAnne Sweeney, \textit{Amber Heard’s Defamations Judgment Should Care Social Media Users}, NBC News (July 13, 2022), https://www.nbcnews.com/think/opinion/johnny-depp-amber-heard-defamation-verdict-scare-social-media-users-rcna36425 [https://perma.cc/CX8Y-TTW7].
\item \textpermbibitem\cite{293} Klasfeld, supra note 281.
\end{itemize}
million of which were punitive damages that the judge reduced to the state cap of $350,000, leaving Depp’s total damage award at $10.35 million.294 Paradoxically, the jury also found that Depp defamed Heard when his lawyers characterized her claim as a “hoax,” and awarded Heard $2 million.295 Heard’s intended to appeal but the case ultimately settled, with Heard agreeing to pay Depp $1 million.296

Despite this more modest result, the Depp-Heard verdict may have a profound impact on the #MeToo movement and future defamation cases.297 If a statement like Heard’s—which did not specifically say that she was abused and did not name any particular abuser—can be ruled defamatory, what could happen to all of the women who were more explicit in their statements? Of particular concern for #MeToo adherents was how men’s rights groups whipped up public opinion against Heard, and how so much of the public believes she is a liar despite the evidence to the contrary, which was largely accepted by the British courts in the Sun defamation case. The backlash against #MeToo seems to have worked its way into the courtroom, thereby making the judicial system appear even more hostile to women survivors.

C. Extragale Backlash

Heard also suffered outside the courtroom. The trial was televised; which allowed for granular dissection in the media and on the internet, including in videos on YouTube298 and

295 Id.
TikTok, GIFs and memes on Facebook and Instagram, and play-by-plays on Twitter. The vast majority of the content was pro-Depp, and a substantial amount of it was created by men’s rights groups and spread by bots. The pro-Depp content focused on portraying Heard as a liar and painting Depp as the actual victim of domestic violence. This backlash also potentially affected Heard’s livelihood. After Depp was removed from the Fantastic Beasts movie franchise, a petition was started to remove Heard from the second Aquaman movie. The petition received nearly two million signatures, although it was


ultimately unsuccessful.\footnote{306} Heard’s agent reported that she lost other work as a result of the backlash against her.\footnote{307}

As seen in Heard’s case, the backlash against accusers, even without legal repercussions, can be devastating and result in chilled speech. For example, fears of false accusations have actually led to economic consequences for women even when they are not involved in #MeToo: men have stated that they will refuse to socialize with or mentor female coworkers or subordinates for fear of false allegations.\footnote{308} Moreover, those who accuse men online are often targeted themselves by the men they accuse and even members of the public who learn about their accusations. One of the quickest and most prevalent repercussions accusers suffer is cyberbullying in the form of hacking (illegally accessing the subject’s computer or online content),\footnote{309} astroturfing (digitally creating the illusion of widespread condemnation of a person),\footnote{310} trolling (posting offensive or shocking comments in order to emotionally overwhelm the target),\footnote{311} and even doxing (publicizing someone’s personal information without their


consent).  

Responses to #MeToo posts show a pattern of verbal abuse. A recent study showed that nearly one quarter of tweets with the #MeToo hashtag also contained comments insulting the accuser, threatening her with violence, or doxing them. Moreover, this “gender-trolling” is amplified by “bot accounts” programmed to automatically generate abusive messages in response to #MeToo tweets.

These attacks are more than just annoying; they can be legitimately threatening, particularly in doxing situations. For example, in response to her testimony against Justice Kavanaugh, Christine Blasey Ford’s home address was made public, and she received several death threats, which forced her and her family into hiding. By contrast, men accused under the #MeToo movement complain of a lack of due process when faced with public criticism or loss of employment, sometimes only temporarily. Those accused of misconduct have not been harassed or threatened on anywhere near the same scale as their accusers can be after they make their allegations public.

This backlash against accusers is nothing new. In 2013, a woman lost her job after posting a photograph of two men who made sexually inappropriate comments at a conference they all attended. She also received a barrage of violent threats and sexual comments on her Twitter feed. Additionally, game developers like Zoe Quinn and feminist commentators like Anita

315 Id.
317 Maloy & Farhi, supra note 173.
319 Id.
Sarkeesian were targeted by men for daring to raise feminist themes in the traditionally male spaces of video games and comic books respectively.220

Because the movement is continually associated with vigilantism and public shaming, #MeToo’s participants remain vulnerable to backlash. The consequences for #MeToo accusers, both legal and extralegal, threaten to stymie the movement unless it can transcend its vigilantism label.

III. #MeToo Transcends Vigilantism

Although much of vigilantism focuses on punishing transgressors, vigilantism also includes a more indirect form of power reclamation whereby vigilantes use certain tactics to influence public perception of larger issues.221 Of all the vigilantism traits discussed so far, the desire to change public perception seems to be the most in keeping with the original purpose and, perhaps, the ultimate destination of the #MeToo movement.

The #MeToo movement was not created with the intention to shame transgressors, but to connect survivors, and, for many women, that remains its primary value.222 As noted by feminist scholar Lesley Wexler, “[f]or many #MeToo claimants, what they want is to tell their story.”223 Indeed, the phrase “me too” is inherently about connection; it tells others that they are not alone and that they are understood.224 Such affirmations can be healing in their own right as a form of social support.225 Victims of sexual assault or harassment often fear victim blaming or have not received support from their friends and

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221 Bateson, supra note 46, at 924.
225 Sophie Sills et al., Rape Culture and Social Media: Young Critics and a Feminist Counterpublic, 16 FEM. MED. STUD. 935, 937, 944 (2016).
family and thus turn to virtual communities to receive the understanding community they need.\textsuperscript{326}

Even before #MeToo began, survivor communities thrived within online platforms such as Reddit.\textsuperscript{327} The posts in these communities focused on survivors telling their stories and often included the name of the perpetrator.\textsuperscript{328} A similar format was adopted by the #NotOkay hashtag, created in 2016 in response to the Access Hollywood tape that showed Donald Trump boasting about how he gropes women.\textsuperscript{329} Although not as far-reaching as #MeToo, the #NotOkay hashtag was used by tens of thousands of women around the world to share their stories of survival.\textsuperscript{330}

The importance of the storytelling aspect of #MeToo cannot be overstated. Storytelling is a fundamental part of how humans understand the world,\textsuperscript{331} and it can present new perspectives in a way that is more persuasive than simply quoting facts.\textsuperscript{332} Although naming perpetrators may have pushed #MeToo into the popular media, it was the stories of the survivors that inspired the movement and kept it going. The vast majority of #MeToo tweets or social media posts do not name the perpetrator. And yet, these stories are memorable and, at times, gut wrenching, not only because they evoke empathy\textsuperscript{333} but because they reveal a world where sexual assault and harassment are commonplace.

Another of the initial drivers of #MeToo was to expose the prevalence of sexual assault and harassment. The public nature of social media makes it “a powerful technology for exposing problematic behavior of others.”\textsuperscript{334} Though this feature of social media—sometimes referred to as “call-out culture”—is criticized,\textsuperscript{335} #MeToo and other movements demonstrate that it

\textsuperscript{326} Alec R. Hosterman et al., \textit{Twitter, Social Support Messages and the #MeToo Movement}, 7 J. SOC. MEDIA SOC'y 69, 72 (2018).
\textsuperscript{327} \textit{Id.} at 74–75.
\textsuperscript{332} Helena Whalen-Bridge, \textit{The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics}, 7 J. ASSN'S LEGAL WRITING DIRECTORS 229, 234 (2010).
\textsuperscript{333} Apt, \textit{supra} note 331, at 961.
\textsuperscript{334} Sills et al., \textit{supra} note 325, at 937.
\textsuperscript{335} Adrienne Matei, \textit{Call-Out Culture: How To Get It Right (and Wrong)}, \textit{GUARDIAN} (Nov. 1, 2019, 1:00 PM),
can also be used to debunk the myth that sexual assault and harassment are random, unusual acts. Repeatedly, founders of these hashtag movements report that, after sharing their story or calling on others to do so, they were overwhelmed by the number of responses they received, which painted a bleak picture as to how many people were suffering, usually in silence.\textsuperscript{336} When someone posts #MeToo, they effectively join a chorus of voices saying the same thing. Their plight and the sheer scope of the problem becomes more visible to the public.

Similarly, the #MeToo hashtag, at least in the beginning, was primarily used to share information about support or resources for survivors and to encourage survivors to seek help.\textsuperscript{337} Early on, media articles reporting on #MeToo likewise focused on providing information and support to survivors and their families.\textsuperscript{338}

The support motivation is probably the strongest for participants in the #MeToo movement. The naming of perpetrators is often done not with the desire to shame them but to warn other women. Even the Landan meme identifying him as a rapist was arguably meant to warn the poster’s Facebook friends of his behavior. The most prominent example of this phenomenon is Moira Donegan’s “Shitty Media Men List,” which was a shared document that women contributed to by adding names of men in the media industry and the harm they caused, which ranged from undermining female coworkers to committing sexual assault.\textsuperscript{339} This list was created so that women in the media industry could be forewarned about the men they work with. Donegan’s List was eventually made public and subsequently shut down. Similarly, a group of students at Tulane University created a Google document titled “Vigilante Justice,” which published many names from an Instagram account called @boysbeware.tulane.\textsuperscript{340} Initially created to warn

\begin{footnotesize}
\textsuperscript{336} Harris, supra note 30.
\textsuperscript{337} Hosterman et al., supra note 326, at 78.
\textsuperscript{339} Vincent, supra note 201.
\end{footnotesize}
other women, this document was eventually made public and criticized for anonymously listing names with no context or description of alleged misconduct.\textsuperscript{341}

The ease of sharing information online had a profound impact on these two lists of names. In both cases, a list that was created for a specific audience—women who work in the media industry or female Tulane students—was made public. Similarly, the #MeToo movement—which was primarily created to start a conversation, albeit a public one, between survivors—was covered by the mainstream media and used as a shaming device. It was this transition that caused these lists and communications to look like vigilantism rather than community safety and support tools.\textsuperscript{342}

However, others note that #MeToo simply redirects existing mechanisms of shame away from the victims and towards their abusers, which could lead to a significant cultural shift.\textsuperscript{343} There is evidence that such a shift is already occurring. Since the #MeToo movement began, the Equal Employment Opportunity Commission (EEOC) has received increased complaints and found greater instances of sexual harassment.\textsuperscript{344} More specifically, the EEOC noted that after the #MeToo movement went viral, the amount of sexual harassment complaints it received jumped by 13.6 percent.\textsuperscript{345} In 2018 alone, the EEOC filed 50 percent more sexual harassment lawsuits and recovered $70 million for survivors as a result of litigation or administrative action, a $22.5 million increase from 2017.

There is also some evidence that federal courts are incorporating #MeToo into their sexual harassment cases. For example, the Third Circuit referenced the #MeToo movement (though not by name)\textsuperscript{346} when it softened its standard of reasonableness for the affirmative defense that an employee

\begin{flushleft}
\textsuperscript{341} Barovick, supra note 340.
\textsuperscript{342} Trottier, supra note 42, at 199.
\textsuperscript{346} Minarsky v. Susquehanna Cnty., 895 F.3d 303, 313 n.12 (3d Cir. 2018). Instead, the court noted in a footnote that “[t]his appeal comes to us in the midst of national news regarding a veritable firestorm of allegations of rampant sexual misconduct that has been closeted for years, not reported by the victims.” Id.
\end{flushleft}
should have reported harassment to a supervisor. Similarly, one commentator noted that, since #MeToo, the Fourth Circuit has been more willing to find that relatively mild conduct—such as sexually suggestive comments or the invasion of a plaintiff’s personal space—may be severe and pervasive enough to constitute sexual harassment.

#MeToo also spurred other movements such as #TimesUp, a hashtag and a legal defense fund founded by more than three hundred women in the entertainment industry that successfully lobbied legislators for legislative reform. As a result of these efforts, and perhaps the general impact of #MeToo, several states enacted laws aimed at curbing sexual assault and harassment, including requiring sexual harassment training for almost all companies, softening the severe and pervasive standard for harassment claims, preventing nondisclosure agreements from hiding harassment, and prohibiting mandatory arbitration agreements, class action waivers, and jury trial waivers in sexual harassment cases.

What is notable about these successes is that they came as a result of #MeToo and #TimesUp’s focus, not on shaming the accused, but on standing in solidarity with survivors as a result of increased awareness of the scope of the problem. Further, #TimesUp and similar movements have not received the same backlash as #MeToo, which indicates that a refocused #MeToo could likewise escape the backlash it has suffered up to now.

CONCLUSION

Whether #MeToo should be considered vigilante justice is certainly debatable. It was created outside of and in response to failing criminal justice and legal systems, and it has also led to consequences, some severe, for its targets. However, the traits the #MeToo movement has in common with vigilantism are

347 Id. at 314 (“Although we have often found that a plaintiff’s outright failure to report persistent sexual harassment is unreasonable as a matter of law, particularly when the opportunity to make such complaints exists, we write to clarify that a mere failure to report one’s harassment is not per se unreasonable.”).


largely the result of individuals who are not part of the movement. The popular media seized on the names reported by survivors—who may or may not have wanted their abusers to be publicly punished—and then popular opinion, employers, and sometimes the criminal legal system became involved. #MeToo was never intended to be about individual perpetrators, it was intended to focus on the survivors and others who could be protected from future abuse.

Calling #MeToo a form of vigilantism, therefore, misses the point. The vigilantism moniker has been used to portray #MeToo as dangerous or unfair, but, if the true essence of the movement is kept in mind, the label is immaterial. Though there may be something of a thrilling feeling of justice or schadenfreude when men like Harvey Weinstein finally go to jail, those victories are short lived when the true scope of the problem is brought back to the foreground. #MeToo may continue to cause sustainable systemic changes if it returns to its original form and purpose: to raise awareness and support survivors.